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The Right to be Forgotten: An aspect of Data Privacy

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ABSTRACT

Human right is not the absolute truth but represents only the truth of an age, being an ideology is contradictory to its very nature which is dynamic. Information, has been the driving force of this age and its protection and distribution has been the primary objective of our technological advancements, however, these technological advancements, exposes humans to new arenas where they could face violations to their human rights. The Internet without differencing between what is essential information and what is personal and irrelevant, stores all the information and keeps it available for access in the public domain even at the cost of fundamental human rights such as the right to privacy along with the right to life of an individual.

In today's world, the right to be forgotten has become an essential aspect of the right to privacy without which the latter cannot function. Since privacy is considered as an essential human right, any restrictions towards the right to be forgotten can and should be viewed as a violation of human rights. Hence, the paper suggests measures like state-control and proper legislations to enforce the right to be forgotten which will further complete the right to privacy of individuals.

Keywords: Data, Data Protection, Human Rights, Internet , Privacy, Right to be forgotten.

INTRODUCTION

Human rights, with the passage of time, come in waves of change and have transformed from being socio-cultural, to being developmentary in nature. The theory of human rights should not be viewed as static, as its very nature is dynamic. An ideology is a systematic concept of set ideas and ideals, human rights, on the other hand, are dynamic in nature and are based on the wide array of areas that human activities are premised on.

Humans inherently are complex beings. They deal with things differently as the time permits them to. It is due to this dynamic nature that the arenas on which they face violation and exploitation also keep on changing. Newer times and newer interactions give rise to newer rights and newer liabilities.

With the passage of time, the ambit and scope of human rights have expanded to such lengths which were next to impossible to foresee at one point, and the major contributing factor to

this is the various inventions of man which to the irony of it, while easing man's life on one hand, also puts him in a position where he needs certain rights to protect his position. One such right was enumerated by the European court of justice in the year 2014, in which the court propounded the "right to be forgotten or the right to erasure" which gives the individuals the right to regulate any such information that is personal and irrelevant in nature and is capable of degrading ones' reputation in his society.

This "right to be forgotten" is much more than an individual simplyrequesting an organisation to erase their data. The right given herein is the right to claim the removal of personal datathat is "inaccurate, inadequate, irrelevant or excessive," from the internet and hence the right is autonomous in the hands of the individual should he wish to be the right holder. Not only this, the right to be forgotten includes a traceable mechanism for making sure that deleted data is also removed from backup storage media. The right to be forgotten is a civil right given to the people to access and regulate any such personal information that is available on the public domain except if the informationhas been retainedin the public interest,this includes, files, records in a database, replicated copies, backup copies and any copies that may have been moved into an archive.The right to be forgotten envisages the people to be in control of their own position in society and to be in charge of the information available to the people about them in the public domain.

IMPORTANCE OF THE "RIGHT TO BE FORGOTTEN"

Human beings, no matter how smart, are essentially animals and submit to all our animal instincts including the instinct to preserve our history. Earlier this had to be done manually and naturally but in today's world, no information is lost, the modern technologies have taken over this work, it keeps a record of all the relevant events and activities that would've otherwise been lost. However, there is also another side to this, with the modern technology occupying this new role, it is very much possible that the seemingly irrelevant data and information of our past can come back to haunt us. This threat is not just limited to irrelevant or out-dated data but also extends to ones' personal information, more specifically ones'personal information that is "inaccurate, inadequate, irrelevant or excessive," and defames him in front of his society and never lets him escape his past.

The right to be forgotten has its roots not only in the grounds of privacy and data protection but also extends its ambit to the fields of intellectual property, reputation, employment, rehabilitation and various other such aspects of the right to life and equality as well as legitimate public interest in accessing online information.For example, the rehabilitation of a convicted criminal in the society after he has served his sentence should not be hindered by the old news of his crimes and he should be given a new chance to rebuild his place in society. Another example is, if a 50-year-old professional with an excellent personal and professional history and no criminal record applies for a job, they should not lose that job because the search engine results of their name by a potential employer show that they were charged for disorderly conduct at the age of 18, for a noisy prank.

In the age of the internet, the old history of one's life is no longer engulfed by the oblivion, but on the other hand, ones' personal information and decisions are always stored in the public domain and are always up for scrutiny. Under the "right to be forgotten" such people can request or claim for their adverse personal information to be taken down and the media organisation will, after checking the relevance of the same,remove it without undue delay. And hence, the right within its ambit encompasses three-wide aspects; firstly, the right to be forgotten; Secondly, the right to correction or erasure and lastly, the right to access data.

We leave digital footprints on the internet wherever we go; these digital footprints are faint and subtle but are nonetheless susceptible to data analysts, data brokers, hackers, and other company analysts. This information contains sensitive data such as the buying-patterns of a person, the web-pages that one visits, the events that one is interested in, who does one talk to, where does one live, the past relationships of people and other such confidential information that is easily available today, online on the cyberspace.

The possibilities of malicious use of ones' private information are veryscary and this makes internet invisibility as the ultimate end of data protection. If not complete anonymity then, at least having control of one's' personal information available to the public and its use by public companies is feasible. The right to be forgotten is, therefore, a balancing act, it asserts individuals' rights on ones' personal information available online and puts these rights above the commercial interests or malicious intentions of someone else.

INTERNATIONAL STANCE ON "RIGHT TO BE FORGOTTEN"

Even before the European court of justice propounded the "right to be forgotten" in the year 2014, the caution that one showed towards his personal information, being accessible to the public and to people misusing that information has always been evident. The urge of people to be in control of their position in the society and to access and regulate the information that is available about them to the public has been apparent through various legislations from around the world. For example, the rationale behind the contemporary right, i.e. the right to be forgotten is similar to that behind the ***Rehabilitation of Offenders Act 1974***, passed by the Parliament of the United Kingdom which enables some criminal convictions to be ignored after a rehabilitation period which is automatically ascertained by the sentence. Once this period is over, if there has been no further conviction, the conviction is said to be 'spent' and barring a few exceptions, it need not be disclosed by the ex-offender in any context such as when applying for employment or insurance, or in any civil proceedings. Thus, the essence of the Act being the protection of a man's future reputation from the life-long taint of a past act,which is also the essence of the right in hand.

Similarly, the ***Fair Credit Reporting Act (FCRA), 15 U.S.C.1681***, is a U.S. Federal Government legislation enacted to promote the accuracy, fairness, and privacy of consumer information contained in the files of consumer reporting agencies. According to the FCRA, the consumers have the right to have certain outdated negative records removed from their credit reports after the lapse of a certain specified time-framewhich is usually 7 years in most cases and extends to 10 years in the case of bankruptcy. Thus, for example, if one fails to pay their credit card bill on time in college, it shall be against the provisions to have the latepayment factored in his credit score when he applies for a mortgage after 20 years. Similarly, it also provides for people to have records of their bankruptcy removed so that they have a clean slate and nothing holding them back when they start afresh. Today, however, owing to the technological advancements, and the multiple forms and numbers of records, it becomes more and more difficult to implement such protections.

The ***Data Protection Acts 1998 and 2003*** confer certain rights on individuals with regard to personal data as well as responsibilities on those persons processing personal data. Those who keep data about individuals, including employers, have to comply with data protection principles. The Data Protection Acts 1998 and 2003 provide that employees have the right to

request their employer (who are "data controllers") to rectify, erase, or block personal data accessible by them if it is incomplete, inaccurate or not up to date.

Personal data includes an employee's HR file, reference checks, medical information, details of accidents or other claims, the information in the investigation and disciplinary processes, redundancy or dismissal of the employee. There are restrictions preventing access by employees to certain data, for example, information relating to investigating or detecting offenses, and legally privileged information.

"RIGHT TO BE FORGOTTEN" AND THE EU

The Right to be forgotten derives its roots from the landmark case of ***Google Spain SL, Google Inc v/s Agencia Española de Protección de Datos, Mario Costeja González***[1], which was referred by the Spanish *Audiencia Nacional*(the Spanish National High Court) to the prestigious European Court of Justice.

The case which sets the precedent to the Right to be Forgotten, was filed by a Spanish national, Mario Costeja González, who requested the removal of a link which appeared upon entering his name in the Google search engine. The facts of the case being that in 1998, upon the order of the Spanish Ministry of Labour and Social Affairs, a Spanish Newspaper "*La Vanguardia"* had published two articles regarding the forced sale of properties arising due to failure of repayment of social security loans with the objective to attract the maximum number of bidders for the same, a version of which was later made available on the internet. One of the properties enumerated in the article belonged to Costeja who was also named in the announcement. Later, in November 2009, Costeja contacted the newspaper asking the data relating to him be removed from the search results which appeared upon inserting his name in the Google search engine but was informed that the same was not possible since the publication had been done on the instructions of the Spanish Ministry of Labour and Social Affairs. Finally, the case was referred to the European Court of Justice.

Here, the landmark case of ***Bodil Lindqvist v/sÅklagarkammarenI Jönköping***[2] which is considered to be the first-ever ruling within the scope of the Data Protection Directive[3] which had been enacted through the Data Protection Act, 1998 of the European Union was cited, where it was held that referring to any person or even identifying them through their names in

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[1]*Google Spain SL, Google Inc v/s Agencia Española de Protección de Datos, Mario Costeja González,* (2014), C-131/12.
[2]*Bodil Lindqvist v/s Åklagarkammareni Jönköping*,(2003), ECLI:EU:C:2003:596.
[3] DirectiveProtection Directive, 95/46/EC.

any internet page or website would add up to the processing of one's personal data automatically.

It was established in the judgment of this case that internet search engines like Google were responsible for the data processed by them relating to one's personal or private data which appeared on various websites and search results published by third-parties. The consequence of the ruling was that these internet search engines would have to consider the pleas from individuals regarding the removal of various hyperlinks which were open to public-access and appeared as search-results upon entering the individual's name in the search bar and thereby remove the same if they were deemed to be "inadequate, irrelevant or no longer relevant or excessive in the light of the time that had elapsed" as opposed to the public's interest and right to information.

Therefore it was held that Google would have to abide by the data protection laws prevalent in Europe and was required to remove the said search results, thus establishing the right to be forgotten which was considered to be the right of an individual deriving from Article 7[4] and Article 8[5] of the Charter of Fundamental Rights of the European Union thus, striking a balance between one's right to data protection and that of privacy. However, Google did win the battle when it came to applying the so established Right to be Forgotten globally, when the European Court of Justice adjudicated that Google was not required to apply it on a global level, limiting its scope only to Europe and thus rightly, not having an impact upon the rights of individuals beyond the jurisdiction of the European laws and courts.

Therefore, although the scope of the Right to be forgotten was restricted solely to Europe, making it a partial relief, despite a few loopholes, such as the de-listed links still being available to the public outside Europe and also to those in Europe provided they masked their location through the use of Virtual Private Networks(VPNs) or other such tools, the Court still set a strong precedent for the world in matters related to the essential and contemporary human right of the Right to be Forgotten which is of acquiring more and more significance in the increasingly digitised world.

The European Union thus has various legislations in order to safeguard one's data like the Data Protection Act of 1998 and 2003, although currently, it is the General Data Protection Regulation (GDPR) 2018 which is in force. The GDPR, being the latest legislation to be in

[4] Charter of Fundamental Rights of the European Union 2000, Article 7 -"Respect for Private and Family Life."
[5] Charter of Fundamental Rights of the European Union 2000, Article 8 - "Protection of Personal Data."

force, added various provisions to the previous Acts like the setting up of a new Data Protection Commission, setting higher standards and uniformity with respect to data protection, amplifying the responsibility of data processing organisations in matters relating personal data, etc.

The Right to be Forgotten can be found envisaged in **Article 17**[6]and **Article 19**[7] of the GDPR as well as in various recitals like **Recital 39**[8], **Recital 65**[9]and **Recital 66**[10]. Article 17 which is concerned with the Right to be Forgotten or the parallelly named Right to Erasure, throws further light upon particulars of the same. **Article 17(1)** specifies the various grounds on which the right may be exercised by an individual, them being:

- The personal data is no longer essential in relation to the reasons for which the data was collected or otherwise processed.
- When the processing of the data is based on the data subject's consent, who in turn withdraws it, leaving no other legalground for the processing of such data.
- When one relies on legitimate interests as their grounds for processing the data, the data subject objects to the processing of their data, thus leaving no overriding legitimate interest to continue this data processing.
- When the processing of personal data is for the motive of direct marketing and the data subject opposes to such processing.
- When the data subject's personal data has been processed unlawfully.
- When the personal data has to be removed owing to the union or the member state laws.
- When an organisation has processed a child's personal data to offer their information society services.

Further, **Article 17(2)** specifies that when a data controller has made one's personal data open to public access and is obliged to erase it according to the provisions specified in Article 17(1), the controller should take all reasonable and technical measures and steps, bearing the cost of data removal and considering the available technology to inform all the other

[6] GDPR 2018, Article 17 - "Right to erasure ('right to be forgotten')".
[7]GDPR 2018, Article 19 -"Notification obligation regarding rectification or erasure of personal data or restriction of processing."
[8] Recital 39- "Principles of Data Processing."
[9] Recital 65- "Right of Rectification and Erasure."
[10] Recital 66 – "Right to be Forgotten."

controllers who are processing the said data, of the request for its removal by the data subject of any links to, or copies or replications of that personal data.

Article 17(3) specifies the grounds on which the data subject may not be able to avail the right, and the processing of that personal data is necessary being:

- The data is used as a part of the Freedom of Expression and Information.
- When the data has been processed in accordance with a legal ruling or obligation.
- When the data is being used in order to perform a task being carried out in the public interest or in exercising an organisation's official authority.
- When the data is being used in the sight of public health and is in the public interest.
- When the data being processed is necessary to perform preventative or occupational medicine, applying on when the data is processed by a health professional subject to a legal obligation of professional secrecy.
- When the data represents important information that serves the public interest, scientific research, historical research, or statistical purposes and where erasure of such data would likely impair or halt progress in that field which was the goal of such processing.
- The data is being used for the establishment, exercise or defense of legal claims.

Thus, Article 17 of the GDPR sets the various guidelines which govern the Right to be forgotten. Additionally, **Article 19**[11] of the GDPR puts further obligations on the data controller i.e. the data controller must communicate any rectification or erasure of personal data or any restriction of processing which has been carried out in furtherance of the Right to be Forgotten, to all the recipients of the personal data unless, it is proven to be impossible or such which involves disproportionate effort. The controller is also obligated to disclose to the data subject about all the recipients of the data if the data subject so requests.

Thus, by observing the vast scope of the detailed provisions and laws prevalent and governing the European Union one may deduce that the European Union attaches the required importance and gravity to data protection and the Right to be forgotten as a human right.

[11]GDPR 2018, Article 19 - "Notification obligation regarding rectification or erasure of personal data or restriction of processing."

ARGENTINA

The 20th-century author Jorge Luis Borges wrote a short story about a boy who suffered a curse of remembering everything.[12] For this boy, the present had no joy and worth as he was always tormented by the memories of his past. The main lesson that one learns from this story is "that forgetting- that is forgetting ceaselessly- is essential and necessary for thought and language and literature, for simply being a human being".[13] And hence the dilemma between forgetting and remembering is not at all new to Argentina.

The struggle for "right to be forgotten" has firmly established itself in Argentina in piteous ways, the battle for which is being fought in the courts of the country in the form of lawsuits brought in by celebrities against two of the Internet's biggest search engines Google and Yahoo. Some two hundred lawsuits mostly brought in by actresses, models, and athletes, against Google and yahoo for the removal of search results and links to photographs that relate their name to pornography or prostitution. The most prominent of these cases is the case of Argentinean pop singer Virginia Da Cunha, who prevailed against Google and Yahoo in the trial court in 2009 but lost on appeal in 2010. Virginia Simari, the judge in favour of De Cunha, stated that people have the right to control their image and avert others from "capturing, reproducing, broadcasting, or publishing one's image without permission."[14]

The ongoing litigation has attracted the world towards the growing conflict between the right to privacy and the right to free speech on the internet. Free speech advocates are showing concern that Argentina is leading a massive movement for a broad right to be forgotten that, if accepted, will mean restriction to access such information that was once public information. However, the acceptance of the right to be forgotten in the Da Cunha case tells us the regard of the people for decades-old notions of data protection, privacy, and

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[12]JORGES LUIS BORGES, *Funes El Memorioso*, *in* FICCIONES – EL ALEPH – EL INFORME DE BRODIE 50(Biblioteca Ayacucho 1986).

[13]2Aleksandar Hemon, *AlexsanderHemon on Jorge Luis Borges's 'Funes the Memorious,'* Daily Beast (Sept. 26, 2012, 4:45 AM), In his personal life, Borges may have wanted to forget—or have others forget—his "promotion" by the regime of President Juan Domingo Perón from municipal librarian to poultry inspector; long-time bachelorhood, followed by a short-lived and unhappy marriage; criticism for not opposing more publicly and vigorously the "Dirty War" in which Argentina's military dictatorship caused the disappearance of thousands of left-wing opponents; and failing to win the Nobel Prize for Literature even though he was one of the preeminent writers and philosophers of his time. Edwin Williamson, Borges: A Life 292–94, 374, 453–54 (2004).<http://www.thedailybeast.com/articles/2012/09/26/aleksandar-hemon-on-jorge-luis-borges-s-funes-the-memorious.html.> Accessed on 15March, 2020.

[14]Carter and Edward, *Argentina's Right to be Forgotten*. - Emory International Law Review.

intellectual property. This is the recent development that tracks the current trend of litigation in Argentina.

The right to be forgotten in Argentina is said to be the most complete because the people can correct, update as well as delete their data and overall, their information is bound to remain confidential.

UNITED STATES OF AMERICA

The right to speech and expression in the United States of America is strongly protected by the very first amendment of its constitution. It provides that the right to speech and expression can only be restricted in certain rare cases only on the orders of the state and no individual has any right to restrict the speech and expression of another in any way. However, the people of the country have been quick to realise that the privacy and confidentiality rights that they enjoy and what have been provided to them since ages, with the advent of modern technology, are being eroded and obliterated. This fact that the country realises the new challenges that the modern technology poses to the old laws is apparent by the judgement given by the federal court in the case ***Melvin v. Reid*** in which the court realising the importance of social standing of an individual held that "any person living a life of rectitude has that right to happiness which includes freedom from unnecessary attacks on his character, social standing or reputation."[15]

However, in the United States, the right to be forgotten has always been viewed as being in contravention with the right to freedom of speech and expression. The right to be forgotten or the right to erasure is viewed less as a means to achieve privacy and confidentiality and more as a restriction on one's speech and expression. The thought is that the right to freedom is indeed a contradiction to the first amendment of its constitution and will result in the restriction of the one's speech and expression by an individual exercising his right to be forgotten. Thus, the first amendment of the constitution of the United States was upheld in the case of ***Sidis v. FR Publishing Corp.*** In this case, the court held that "there were limits to the right to control one's life and facts about oneself, and held that there is social value inpublished facts" [16]and thus held that the right to freedom of speech and expression does indeed get restricted by the use of the right to forgotten and also supersedes it.

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[15]*Melvin v. Reid*,(1931), 112 Cal.App. 285, 297 P. 91 (1931) at 852-853.

[16]*Sidis vs. F-R Publishing Corporation*, (1940), 311 U.S. 711 61 S. Ct. 393 85 L. Ed. 462 1940 U.S.

SOUTH KOREA

In South Korea, on May 2016, the Korea Communications Commission in its "Guidelines on the Right to request access restrictions on personal internet postings"[17] announced that citizens will be able to request the internet search engine companies as well as the administrators of a particular website to remove their personal posts or information from the public domain so they are not accessible, However, this right does not extend to and apply on third party content. Hence, the guidelines provide for only partial right to be forgotten and not the right in its absolute form.

The guidelines provided by the Korean Communications Commission containa provision for the removal of the URL links as well as any other evidence containing evidence of personal information. These guidelines can be viewed as the minimum or preliminary defence of the privacy rights of an individual in those grey areas of law that are not properly defined and are vague in nature. The guidelines give an individual, control over their personal information and its availability to others on the public domain. The right to be forgotten is the basic fundamental principle underlying these guidelines as issued by the government of South Korea.

THE PRESENT SCENARIO OF RIGHT TO BE FORGOTTEN IN INDIA

In 2017, in response to the writ petition filed in 2012, the Supreme Court of India in the landmark judgement of ***Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India And Ors***[18] held that "the right to privacy is protected as a fundamental constitutional right under Articles 14, 19 and 21 of the Constitution of India." The nine-judge bench of J.S. Khehar, J. Chelameswar, S.A.Bobde, R.K.Agrawal, R.F.Nariman, A.M.Sapre, Dr.D.Y.Chandrachud, S. K. Kaul and S.A. Nazeer unanimously held that "the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution"[19].

Along with declaring the right to privacy as a fundamental right, the decision also set in motion the process of the government to contemplate, consider and then legislate upon a new

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[17]"South Korea Releases Right to Be Forgotten Guidance". <www.bna.com.> Accessed on 28 March,2020.
[18]*Justice K. S. Puttaswamy (Retd.) and Anr. vs. Union of India And Ors*, (2012), Writ Petition (Civil) No 494 of 2012.
[19]SCC Blog ,*9-judge bench Archives*, Accessed on 25th March 2020.

data protection legislation which is well equipped to protect the privacy of individuals from the new technological threats of the modern times and the challenges they impose. To achieve the set the goal, a committee was formed under the chairmanship of retired Supreme Court judge Justice BN Srikrishna, this committee after necessary deliberation submitted its report on the "Framework of the data protection bill". This report gives special emphasis to the interests and the rights of the citizens as well as the duty and responsibility of the state to ensure the unrestricted right to privacy of its citizens. However, it is an important feature of the bill that the enforcement of the right to privacy cannot come at the cost of trade and industry.

Although the "right to be forgotten" is not yet a "hard" or a "settled law" in India, However, it has been incorporated in the Personal Data Protection Bill, 2018. Section 27 of the bill provides for the right to be forgotten by giving the person who has posted the content online or the person about whom the personal information is related to also known as "data principal", the power or the right to restrict the disclosure or publicity of his/her such personal information by "data fiduciary". The bill also provides for the grounds on which the "data principal" can exercise this right. Firstly, if his personal data has served the purpose for which it was posted or put up online in the public domain. Secondly, the data principal withdraws his consent for his personal information to remain in the public domain and lastly, if the existence of his personal information in the public domain is a violation of any in force legislation.

Special care has been taken and the nature of the bill is so that the right to be forgotten cannot be exercised at the cost of freedom of speech and expression. The nature of the bill is so due to the addition of Section 68 in the bill which provides for the appointment of the Adjudicating Officer. The data principal in order to exercise his right to be forgotten shall have to file an application before the Adjudicating officer who after viewing the different factors of the case such as the sensitivity of the personal data, the data principals position and stature in the society, the importance and relevance of the said data to the public sphere. Only after due deliberation and consideration if the Adjudicating officer is satisfied, then the right to be forgotten will supersede the freedom of speech and expression along with the right to information of the public or an individual. The authority to male rules and regulations regarding the filing of the application rests with the central government[20]. Furthermore, A

[20]Personal Data Protection Bill 2018, Section 107(2)(a).

right to appeal against the decision of the Adjudicating officer if it does not satisfy any grounds and to review his decision is provided under Sub-section 5 of Section 27 of the bill.

Not only this,the judiciary of India has also played an integral role in the amalgamation of the right to be forgotten into our constitution but setting strong precedents on the same. In the case of ***Sri Vasunathan v/s The Registrar General &Ors.***[21]**,**the court recognised the "right to be forgotten" in severe and sensitive cases like rape and especially with respect to women, Justice Anand Byrareddy disposed of the petition by concluding that:

"This would be in line with the trend in the Western countries where they follow this as a matter of rule "Right to be Forgotten" in sensitive cases involving women in general and highly sensitive cases involving rape or affecting the modesty and reputation of the person concerned."

Further, in the suit of ***Zulfiqar Ahman Khan v/s Quintillion Business Media Pvt. Ltd. and Ors***.[22] The Delhi high court ordered for the articles in question to be removed completely from the public domain and also forbid its republication in any media. The Delhi high court also declared that the "right to be forgotten" and the "right to be left alone" are inherent factors of "right to privacy" and is what completes it.

Hence it is very evident that both the legislature along with the Judiciary of the country has accepted the right to be forgotten or the right to erasure is ingrained in the right to privacy. The Legislation with the passing of the Privacy and data protection bill, 2018 and the judiciary setting the necessary judicial precedents, the right to be forgotten has started to be absorbed in the Indian constitution becoming an essential part of the Indian legal system.

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[21] *Sri Vasunathan v/s The Registrar General &Ors*.,(2016),Writ Petition Number 62038 of 2016 (GM-RES).

[22]*Zulfiqar Ahman Khan v/s Quintillion Business Media Pvt. Ltd. and Ors.,(*2019) (175) DRJ 660.

CONCLUSION

By taking into account the need of today's times, the reaction of the member states of the world community in the international realm to the right to be forgotten as well as its adoption in various municipal laws of these member states, it can be concluded that the right to forget or also know as the right to erasure has established itself and is being viewed increasingly as an inherent facet of the right to privacy of any individual. The right to be forgotten is being accepted as an essential element of privacy so much so that the right to privacy cannot be said to be absolute without it. This is proof of the doctrine that was once a "soft law" turning into a "hard law' by the virtue of recognition and legislation by the nation-states.

The nation-states, in some form or another, have been observed to have realised the importance of the right to be forgotten in today's world and adopted the right to be forgotten. While some have entered a treaty or signed a convention requiring the recognition of the right, other nations have recognised it through the interpretation of its judiciary. However, the penetration this right has been so deep that it has already become a part of the constitution or the municipal lawsof various countries through proper legislative procedures.

Since almost all the constitutions of the world provide for the right to life to the people it governs and because the biggest objective of any constitution is to provide a better standard of living for its people, the Right to privacy must be, and is, provided to everyone. However, in modern times the advent of new technology obliterates an individual right to privacy by retaining information for lifetimes and essentially storing any information, no matter how defaming, personal or irrelevant, in the public domain free to be accessed by anyone.

Hence, it can be safely concluded that the right to be forgotten is an essential or *sine qua non* for the right to privacy to be absolute and for an individual to completely exercise his right to privacy in the modern era. In turn, this right to privacy is also essential to the right to life of an individual which is the most fundamental of all human rights. Unnecessary publication of the names of the rape victims, years after the judgement, is a violation of the right to privacy of an individual as well as the right to live with respect and dignity under the right to life. Thus, it can be concluded that the right to be forgotten is ingrained in the right to life of an individual which is the basic feature of the constitution and must be adhered to.

It is submitted that the right to be forgotten cannot be viewed and practiced as an absolute right because doing so would mean a restriction on one's right to speech and expression along with the right to information of an individual and absolute enforcement of the right will result in the violation of other fundamental rights of the people. However, it is to be noted that the right to be forgotten is not only an essential human right but also acts as a tool to help exercise other human rights as well and hence should be compulsorily provided this power by the constitution to its people. Not only must the right to be forgotten viewed as a human right but the lack of it should also be viewed as a gross violation of basic human rights and thus not be tolerated.

It is thus concluded that, after the acceptance of the right to be forgotten by the most developed countries and by their act of adopting the right into its municipal laws thus increasing the credibility of the right, it is now the time for it to be recognised and applied by the other nation-states to turn it into a hard law with the sanction of the sovereign through proper legislation. Not only this but the right to be forgotten should also, in today's time, be viewed as no less than a fundamental human right of any individual and the state must do everything in its power to provide this right to its people and at the same time not tolerate its violation.

SUGGESTIONS

For a future where the right to be forgotten is synonyms with the right to privacy as well as the right to life, our suggestions are as follows:-

Firstly,the right to be forgotten must be viewed as nothing less than a human right, which is a fundamental and basic protection against the new dangers of modern technology. Once viewed as an essential human right, it then has to be adopted by all the countries in its national laws through legislation. Once viewed as a human right, its violation will then not be tolerated, and its enforcement will be simpler. Also, it must be understood that the right to be forgotten in inherent in the right to life of an individual which is also an essential human right in itself.

Secondly, throughdecent state control over the internet, meaning, a little censorship and filtering of the personal and irrelevant information put up by an individual or any corporation, it will help increase the efficiency to exercise one's right to be forgotten. By delegating the

censoring work to the administrators of the search engines or the websites or by the appointment of new officers for censoring the personal or irrelevant information and thus initiating its removal from the public domain will act as an efficient enforcement mechanism for the enforcement of the right to be forgotten.

Lastly, a differentiation needs to be made in between the information that is useful and relevant to the society and its working and the other information which is irrelevant and get in the way of rehabilitation of people into their normal lives. For example, a track record of a murderer maybe be kept in the public domain and remain there due to its relevance to the functioning of the society, however, the names of rape victims, years after the judgment is passed maybe be differentiated as irrelevant and defaming information and thus be removed from the public domain with strict instructions not to be published again.

It is only through this differentiation and recognition that the right to be forgotten of an individual will not contradict and violate the right to information of the public along with the fundamental right of speech and expression and for all these three rights to exist in harmony alongside each other and work together in ensuring the right to privacy of an individual. It is also by the virtue of this differentiation that it will be decided, based on the circumstances and other factors, whether the right to be forgotten, in the present case, supersedes the freedom of speech and expression as well as the right to information of the public, or whether in the present case its exercise violates those fundamental rights to the people.

If the suggestions are met, then the right to be forgotten is going to be a new human right evolved as a part of the 3rd Wave of human rights which are socio-developmentary in nature. These human rights have been evolved as a shield against the challenges posed to us by the changes in technology and to cope up with the new dangers of these technologies on the privacy of an individual. The right to be forgotten should soon be recognised as an essential and a fundamental human right, provided to everyone and soon be viewed as an essential without which the right to life of an individual is lacking.